

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company and the State of Illinois,  
Department of Transportation.

Stipulated Agreement regarding improving public safety by the (a)  
Renewal of the existing crossbuck signs at all passive (i.e., not  
equipped with automatic warning devices) public highway-railroad  
grade crossings of the Norfolk Southern Railway Company's  
track(s) in the State of Illinois; and the (b) Installation of YIELD  
signs at all passive (i.e., not equipped with automatic warning  
devices) public highway-railroad grade crossings of the Norfolk  
Southern Railway Company's track(s) in the State of Illinois that  
are not currently equipped with STOP signs.

T06-0031

**ORDER**

By the Commission:

On October 18, 2005, November 1, 2005 and May 9, 2006, the Staff of the Illinois Commerce Commission ("Commission"), the Illinois Department of Transportation ("Department") and the Norfolk Southern Railway Company ("Company") respectively, executed the Stipulated Agreement No. 1130 according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for renewal of crossbuck signs and the installation of YIELD signs at the Company's public rail-highway grade crossings with passive marking in Illinois. Crossings with STOP signs will receive crossbuck renewal only. Stipulated Agreement No. 1130 contains estimates of cost to accomplish the improvements and a division of cost among the parties and the Grade Crossing Protection Fund (GCPF or Fund) of the Motor Fuel Tax Law.

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) Lists of the Norfolk Southern Railway Company's 340 public highway-railroad grade crossings subject of this proceeding are attached as Exhibits A and B of the Stipulated Agreement appended hereto;
- (3) The parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto should be performed;

- (4) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the GCPF of the Motor Fuel Tax Law and the Norfolk Southern Railway Company should be directed to bear their respective portions of the actual cost of the proposed improvements as set forth in Section 5 of the Stipulated Agreement appended hereto;
- (5) 625 ILCS 5/18c-1701 and 1704 require each "person," as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
- (6) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (7) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.
- (8) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.
- (9) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED that the terms of Stipulated Agreement No. 1130, executed by Staff of the Commission, the Illinois Department of Transportation and the Norfolk Southern Railway Company on October 18, 2005, November 1, 2005 and May 9, 2006, respectively, be and they are hereby accepted and required to be met by the aforesaid parties.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company be, and it is hereby required and directed to proceed immediately in performing the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto, and shall thereafter maintain same. The Norfolk Southern Railway Company shall complete the work within eighteen (18) months from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements hereinbefore required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law as set forth in Section 5 of the Stipulated Agreement appended hereto.

IT IS FURTHER ORDERED that all bills for expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62764. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in this Order. The final bill for expenditures from the Company shall be clearly marked "Final Bill". All bills shall meet the minimum documentation requirements set forth in Section 7 of the Stipulated Agreement, appended hereto. The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements set forth in Section 2 of the Stipulated Agreement, appended hereto, without prior approval by the Commission. The Commission shall, at the end of the 12<sup>th</sup> month from the completion date specified in this or any Supplemental Order, notify the Department to de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, at six (6) month intervals from the date of this Order, shall submit a Project Status Report, attached as Exhibit 1 of the Stipulated Agreement, with the Director of Processing and Information, Transportation Bureau of the Commission, stating the progress it has made toward completion of its work herein required. Each Project Status Report shall include the Commission Order Number, the Order date, the project completion date as noted in the Order, crossing information (Inventory Numbers and Railroad Mileposts), type of improvement, and project manager information (the name, title, mailing address, phone number, facsimile number and electronic mailing address of the employee responsible for management of this project).

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, within five (5) days of the completion of the work herein required of it, shall submit United States Department of Transportation Inventory Forms (6180.71), to the Federal Railroad Administration, the Chief of Data Services at the Illinois Department of Transportation, and the Director of Processing and Information, Transportation Bureau of the Commission.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company be, and it is hereby required and directed to submit a Project Status Report, to the Director of

Processing and Information, Transportation Bureau of the Commission, stating that the work herein required of it has been completed. Said Report shall be submitted within five (5) days after the project completion date.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person making a Request for an Extension of Time that exceeds 30 days must file a Petition for Supplemental Order with the Director of Processing and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Sections 18c-2201 and 18c-2206 of the Law, this is the final decision subject to the Administrative Review Law.

By Order of the Commission this 7th day of June 2006.



Chairman

JUDGE
SECTION CHIEF <i>MES</i>
<i>Dub</i> ORDERS SUPERVISOR